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Employment-Test Dispute Before Supreme Court Could Affect Colleges

By PETER SCHMIDT

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The U.S. Supreme Court has taken up a racial-discrimination lawsuit filed by Hispanic and white firefighters that could lead to a decision altering how colleges use tests in hiring and admissions decisions.

The case, *Ricci v. DeStefano*, centers on the New Haven, Conn., city government's 2003 decision to throw out the results of a civil-service test for firefighters because no black and relatively few Hispanic firefighters had scored well enough on it to qualify for promotions. The lawsuit—filed by Hispanic and white firefighters who had passed the test—argues that the city government's actions violated the plaintiffs' rights to equal protection under the law and Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination.

Lawyers for the firefighters asked the Supreme Court to take up the case after the U.S. Court of Appeals for the Second Circuit upheld a lower court's conclusion that the city's decision to throw out the test results was "race neutral" because all applicants, regardless of race, were affected.

Among the key questions pending before the Supreme Court, which agreed this month to hear the case this term, are whether city governments can throw out the results of a valid test that yields racially disproportionate results; whether Supreme Court precedents that bar employers from altering tests to produce desired racial outcomes also bar them from throwing out test results for reasons of race; and whether federal courts can relieve municipalities from complying with state civil-service laws requiring race-blind, merit-based hiring.

Lawrence Z. Lorber, a labor and employment lawyer for the firm Proskauer Rose, whose clients include several colleges, said higher education had a clear interest in the case because it opens the door for the justices to revisit past decisions dealing with affirmative action, diversity, testing, and government policies and actions shown to have a disparate impact on certain racial groups. "It could be a very significant case," he said.

Three advocacy groups critical of affirmative action at colleges—the American Civil Rights Institute, the Center for Equal Opportunity, and the Center for Individual Rights—have also concluded that the case has implications for colleges. In a friend-of-the-court brief urging the Supreme Court to take up the case, they argue that the Second Circuit's decision, if upheld as law, would let colleges adopt "irrelevant" admissions criteria expected to favor minority applicants.

The advocacy groups' brief also argues that the Second Circuit's conclusion that New Haven's lack of animosity toward the white firefighters undermines their discrimination claims

contradicts a ruling by the U.S. Court of Appeals for the 10th Circuit last year in a case involving Colorado Christian University. In that decision (*The Chronicle*, July 24, 2008) the 10th Circuit rejected state officials' assertion that they did not discriminate in withholding scholarships from students at certain religious institutions because they had not been motivated by animus toward that religion.